IN THE HIGH COURT OF JUDICATURE OF BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

NOTICE OF MOTION NO. 3118 OF 2003

IN

SUIT NO. 4066 Of 1993

Y.G. Jadhav .. Plaintiffs

versus

R.R. Nabar & Co. & ors. .. Defendants

...

Mr.S.P. Thorat for the plaintiff.

Mr.Ajay Kandhar fo the defendant no.1.

Defendant no.2 present in person.

CORAM : D.G. KARNIK,J.

DATED : 4th March 2005.

P.C.:

1. Heard the learned counsel for the plaintiff, learned counsel for the defendant no.1 and the defendant no.2 appearing in person for self and for defendant no.3.

2. This motion is taken out by the plaintiff for a direction to the defendant no.2 and 3 to hand over and deliver the shares held by them in the defendant no.4 company.

3. According to the plaintiff, the suit shares belong to him and they were handed over by him to the defendant no.1 as broker. The defendant no.1 wrongly transferred the suit shares to the defendant nos.2 and 3. The plaintiff has therefore filed a suit for a declaration that the defendant no.1 had negligently and wrongfully delivered the shares to the defendant no.2 without any authority and a further direction to the defendant nos.2 and 3 to re-transfer the said shares to the plaintiff.

4. Learned counsel for the plaintiff states that in the arbitration proceedings between defendant no.1 on one hand and defendant nos.2 and 3 on the other hand in an award has been passed against defendant nos.2 and 3. Therefore, according to the plaintiff, the plaintiff is entitled to the said shares. Admittedly, the plaintiff was not a party to the arbitration proceedings. If the defendant no.1 has

any right in the said shares under the award, it is open to the defendant no.1 to execute the said award. The plaintiff cannot directly claim the said shares from the defendant nos.2 and 3 on the basis of the said award. Granting of interim relief in favour of the plaintiff on the basis of the award between the defendant no.1 on one hand and defendant nos.2 and 3 on the other hand would amount to virtually decreeing the suit before trial. If the shares are directed to be given to the plaintiff by allowing this motion, nothing further would survive in the suit and the defendant nos.2 and 3 would not have passed an opportunity of defending the suit. This cannot be done.

5. For the reasons, the motion is dismissed.

D.G. KARNIK, J